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Order 96-9-1

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**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 3rd day of September, 1996

Application of

AMERICAN AIRLINES, INC.

for exemption under 49 U.S.C. § 40109 and
allocation of frequencies (Chicago-Vancouver and
Dallas/Ft. Worth-Vancouver)

Docket OST-96-1579

Application of

NORTHWEST AIRLINES, INC.

for an exemption under 49 U.S.C. § 40109 and
amendment of allocation of frequencies (Los
Angeles-Vancouver)

Docket OST-96-1606

Application of

UNITED AIR LINES, INC.

for allocation of U.S.-Vancouver second year
service opportunity (Los Angeles-Vancouver and
San Francisco-Vancouver)

Docket OST-96-1610

ORDER

Summary

By this order we (1) deny American Airlines, Inc.'s application for authority to provide Chicago-Vancouver services and its request for allocation of a frequency from Northwest Airlines; (2) grant Northwest Airlines, Inc. an exemption to provide scheduled combination service between Los Angeles, California, and Vancouver,

Canada, on flights operated by Alaska Airlines, Inc.; (3) amend Order 96-2-49 to authorize Northwest to shift its two second-year U.S.-Vancouver frequencies from the Minneapolis-Vancouver and Detroit-Vancouver markets to the Los Angeles-Vancouver market; and (4) grant United Air Lines, Inc.'s motion to withdraw its captioned application.

Background

Under the 1995 U.S.-Canada Air Transport Agreement, signed February 24, 1995, during each of the first two years of the Agreement, the United States may authorize six new services in the U.S.-Vancouver market by six different airlines for up to two frequencies per day by each airline for passenger/combination services between any points in the United States (in markets existing as of the entry into force of this Agreement or in new markets) and Vancouver.¹ By Orders 95-9-16 and 96-1-4, the Department awarded the available authority for the first two years.² Under the provisions of the Agreement, there are no limitations on U.S.-Vancouver services by U.S. carriers after February 24, 1997.

Applications

By application filed July 22, 1996, and amended August 1, 1996, American seeks exemption authority to provide foreign air transportation between Chicago, Illinois, and Vancouver, British Columbia, Canada, and the allocation of one frequency to begin such services under a code-share arrangement with Canadian Airlines International (CAI), whereby CAI will display the "AA" designator code on its flight.³

¹ Annex V, Section 2 (A)(5) and (B)(2).

² Order 95-9-16 awarded certificate authority to the following carriers for the markets indicated, with each carrier being awarded two daily round-trip frequencies: American Airlines, Inc. for Dallas/Fort Worth-Vancouver; America West Airlines, Inc. for Phoenix-Vancouver; Delta Air Lines, Inc. for Salt Lake City-Vancouver; Northwest Airlines, Inc. for Minneapolis/St. Paul-Vancouver; Reno Air, Inc. for Reno-Vancouver; and United Air Lines, Inc. for San Francisco-Vancouver. Order 96-1-4 confirmed *pendente lite* exemption authority for the second-year applicants for US-Vancouver authority, orally granted by Notice of Action Taken October 19, 1995, in the markets indicated: American for New York and Miami; America West for Las Vegas; Alaska for San Diego; Delta for Cincinnati and Atlanta; Northwest for Minneapolis (additional frequencies only); and United for Denver and Los Angeles. By subsequent Notices of Action Taken on January 25, 1996 in Dockets OST-95-948 and OST-95-709 (confirmed by Order 96-2-49) the Department granted Northwest's request for exemption authority in the Detroit-Vancouver market and its request to amend the temporary October 1995 allocation to allocate Northwest one daily frequency for additional services in the Minneapolis/St. Paul-Vancouver market and one daily frequency for new services in the Detroit-Vancouver market; also by subsequent Notices of Action Taken on July 19, 1996 in Dockets OST-96-1534 and OST-95-716, the Department granted Alaska's request for exemption authority in the Los Angeles-Vancouver market and its request to amend the temporary October 1995 award so as to switch Alaska's second-year frequency allocations for Vancouver services from San Diego to Los Angeles so that Alaska could operate San Diego as its base of operations. American sought two frequencies that were awarded to Northwest Airlines by Order 96-1-4 and 96-2-49. American maintained that the frequencies were available since Northwest's advance schedules in the SABRE system indicated that Northwest would suspend one of its three Minneapolis/St. Paul-Vancouver nonstop flights effective September 30, 1996, and its Detroit-

American requests that the Department grant American the necessary underlying authority so that it can place the “AA” designator code on Canadian’s Chicago-Vancouver flight, effective September 5, 1996, and transfer Northwest’s Detroit-Vancouver frequency to American for use in its Chicago service. American states that under its interpretation of the 1995 Agreement, it does not require additional authority to place the “AA” code on Canadian’s Dallas/Ft. Worth-Vancouver flight, but it does require the transfer of Northwest’s Detroit-Vancouver frequency to Chicago in order for it to conduct its proposed Chicago-Vancouver operation.

By application filed July 30, 1996, Northwest seeks an exemption to permit Northwest to provide scheduled combination service between Los Angeles, California, and Vancouver, British Columbia, Canada, on a code-share basis on flights operated by Alaska Airlines, Inc. It further requests that the Department amend Order 96-2-49 so as to authorize Northwest to shift its two second-year U.S.-Vancouver frequencies from the Minneapolis-Vancouver and Detroit-Vancouver markets to the Los Angeles-Vancouver market. Northwest states that it intends to discontinue temporarily its Detroit-Vancouver service on September 9, 1996, and one of its Minneapolis-Vancouver flights effective September 30, 1996. Instead of the suspended flights, Northwest states that it plans to use its year-two U.S.-Vancouver frequencies to display the Northwest code on Alaska’s two new daily flights between Los Angeles and Vancouver which are scheduled to commence October 4, 1996. Northwest states that the proposed Los Angeles-Vancouver code-share services are clearly consistent with the public interest and will significantly enhance Northwest’s and Alaska’s market presence and will position both carriers to be strong competitors in the Los Angeles-Western Canada market against the dominant services of Canadian and Air Canada.

By application filed July 31, 1996, United seeks the allocation of an additional second-year U.S.-Vancouver service opportunity to offer additional daily services between both Los Angeles and Vancouver and San Francisco and Vancouver under a by code-share arrangement with Air Canada on two of its flights operated in these city pairs beginning October 1, 1996.⁴

Related Pleadings

Alaska and Northwest (jointly), United, and Delta Air Lines, Inc. filed answers to American’s application. American filed an answer to Northwest’s application.

Vancouver nonstop flight effective September 9, 1996. American originally sought one frequency to increase its Dallas/Ft. Worth-Vancouver services and the second frequency to begin Chicago-Vancouver services. American’s amended application withdraws the request to transfer Northwest’s Minneapolis/St. Paul-Vancouver frequency to Dallas/Ft. Worth. American’s amended application was accompanied by a motion for leave to file. We will grant the motion.

⁴ United’s application was accompanied by a motion to shorten the answer period. By Notice of Action Taken, dated August 2, 1996, the Director of the Office of International Aviation established a common answer date to the three applications requiring that all answers were to be filed no later than August 9, 1996, and any replies no later than August 13, 1996.

Northwest, United, and the Dallas/Fort Worth Parties each separately filed a consolidated answer concerning the three captioned dockets.⁵ American filed a late reply to the answers submitted August 9.⁶

Northwest states that there are no U.S.-Vancouver frequencies available for allocation to American. Alaska and Northwest jointly state that American's application is based on its assumption that Northwest will abandon its two second-year Vancouver frequencies in September and that, contrary to that assumption, Northwest is not abandoning its two second-year Vancouver frequencies, but rather is contemporaneously requesting transfer of these frequencies in order to code share with Alaska in the Los Angeles-Vancouver market. They further state that they do not object to American's code-sharing with Canadian in the Chicago-Vancouver and Dallas/Ft. Worth-Vancouver markets, but that American and Canadian should request the Canadian Government to authorize their code-share service outside of the U.S. carrier transitional service program covering the Montreal, Toronto, and Vancouver gateways. They also argue that the Vancouver transitional frequencies were explicitly negotiated to be used by U.S. carriers and that under the Alaska-Northwest code-share proposal, Northwest's two second-year Vancouver frequencies would be used to enhance the competitive presence of two U.S. carriers.

American argues that Northwest only requires the transfer of one of the two second-year U.S.-Vancouver opportunities in order to have the underlying route authority for code-sharing over the Los Angeles-Vancouver route and that one of Northwest's dormant second-year frequencies should be used to create underlying route authority for American to serve Chicago-Vancouver. It acknowledges, however, that American's proposed Chicago-Vancouver operation will require a waiver of the provision in the Agreement which stipulates that the United States may not award more than two U.S.-Vancouver frequencies to a single carrier in each of the two years of the transitional period and requests the Department to approach the Canadian authorities for such a waiver.⁷

The Dallas/Ft. Worth Parties support American's application and state that the Department should confirm American's right to code share on Canadian's DFW-Vancouver flight without further Department authority.

Delta disputes American's interpretation of the code-share provision in Annex V of the Agreement. It argues that American currently operates in its own right all of the Vancouver frequencies available to American under the phase-in limitations of Annex V and that under the terms of the bilateral American is not eligible to receive an additional second-year allocation of Vancouver frequencies. Delta urges the Department to reject American's interpretation that it does not need extra-bilateral authority to code-share on CAI's Dallas/Ft. Worth-Vancouver flights.

⁵ United's consolidated answer was accompanied by a motion to withdraw its application. We will grant the motion.

⁶ American's reply was accompanied by a motion for leave to file one day late. We will grant the motion.

⁷ See Answer of American to Northwest's application, August 9, 1996, at footnote 2.

American disputes the arguments of those urging that the Department not approve American's application. American maintains that its application should be granted promptly so that it may finalize its plans to introduce new code-sharing service with CAI. American argues that Annex V, Section 4, paragraph 3 of the Agreement permits the code-sharing operations American proposes since the traffic carried will be solely transborder traffic.

Decision

American's Application

We have decided to deny American's application for an exemption and its request for reallocation of Northwest's frequencies.

The provisions of the U.S.-Canada bilateral permit the United States to authorize six carriers for U.S.-Vancouver services during the second year of the Agreement, but clearly state that each carrier authorized for such operations is limited to a maximum of two daily round-trip frequencies. American was one of the six carriers authorized to provide second-year Vancouver services, and it is operating these services at the two frequency per day maximum (one at New York, one at Miami). American thus is not eligible for another award of second-year Vancouver services, and we will deny its application. Should American seek to move its authorized second-year Vancouver services to other markets, it is free to file such an application for consideration.⁸

Northwest's Application

We have decided to grant Northwest an exemption to provide scheduled combination service between Los Angeles, California, and Vancouver, British Columbia, Canada, and to amend Order 96-2-49 to authorize Northwest to shift its two allocated second-year U.S.-Vancouver frequencies from the Minneapolis-Vancouver and Detroit-Vancouver markets to the Los Angeles-Vancouver market.⁹

Northwest's proposal is consistent with the rights available under the U.S.-Canada Aviation Agreement and indeed, will help ensure full utilization of those rights. Thus, we regard grant of the authority as consistent with the public interest.

⁸ Given our decision here, we need not reach the issues raised by American and Delta regarding American's interpretation of the provisions of the 1995 U.S.-Canada Aviation Agreement.

⁹ American had requested that we transfer one of Northwest's two Vancouver frequencies to American for use on American's proposed Chicago-Vancouver service. That request is moot in light of our action denying American's application *supra*.

ACCORDINGLY,

1. We deny the application of American Airlines, Inc. in Docket OST-96-1579;
2. We exempt Northwest Airlines, Inc., from the provisions of 49 U.S.C. § 41101 to the extent necessary to provide scheduled combination service between Los Angeles, California, and Vancouver, British Columbia, Canada;
3. The exemption authority granted in ordering paragraph two is effective immediately and shall expire February 24, 1997;
4. We amend Order 96-2-49 (which confirmed the Notice of Action Taken dated January 25, 1996) to authorize Northwest to use its two second-year U.S.-Vancouver frequencies in the Los Angeles-Vancouver market;
5. The frequency allocation in ordering paragraph four is effective immediately and shall expire October 18, 1996, consistent with the effective dates in the January 25, 1996, Notice of Action Taken confirmed by Order 96-2-49;
6. The services authorized here and operated under a code-share arrangement must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and are expressly conditioned upon the requirements that the foreign air transportation be sold in the name of the carrier holding out the service in computer reservations systems and elsewhere and that the carrier selling such transportation accept all obligations established in the contract of carriage with the passenger (*i.e.* the ticket);
7. We grant the motions of American Airlines, Inc. for leave to file an otherwise unauthorized document and for leave to file one day late;
8. We grant the motion of United Air Lines, Inc. to withdraw its application in Docket OST-96-1610; and
9. We will serve this order on Alaska Airlines, Inc.; American Airlines, Inc.; Delta Air Lines, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc.; the Dallas/Ft. Worth Parties;

the Ambassador of Canada in Washington, D.C.; the U.S. State Department (Office of Aviation Negotiations); and the Federal Aviation Administration.

BY:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>.*